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S.B. CIVIL WRIT PETITION NO.7948/2007.

Kishna Ram Bishnoi Vs. State & Ors.

Date of Order :: 8th December 2007.

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. B.R. Bishnoi, for the petitioner.

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BY THE COURT:

Heard learned counsel for the petitioner and perused the material placed on record.

The petitioner, working on the post of Teacher Gr.III, having been transferred by the order dated 14.09.2007 from Government Primary School, Baggon-ki-Dhani, Kavakhera, Panchayat Samiti Bhinmal to Government Primary School, Galbon-ki-Dhani, Kora, Panchayat Samiti Bhinmal on administrative exigency, sought to challenge the transfer order in an appeal before the Rajasthan Civil Services Appellate Tribunal, Jaipur (Appeal No.2131/2007). The petitioner has stated that the Tribunal has rejected the appeal but he was not having the copy of the order passed by the Tribunal. Be that as it may, the petitioner filed a writ petition before this Court, being CWP No.7391/2007 but the same was withdrawn on 19.11.2007 with the counsel for the petitioner making submissions on instructions that the impugned transfer order had since been withdrawn and thus the petitioner wanted to

withdraw the writ petition with liberty to take resort to appropriate remedies in future in relation to his posting/transfer in accordance with law, if occasion so arise. This Court dismissed the writ petition as withdrawn with liberty as prayed while recording the statement made on behalf of the petitioner thus:

> "Though this petition has been filed questioning the transfer order dated 14.09.2007 and it is pointed out that the appeal (No.2131/2007) submitted against the said transfer order to the Rajasthan Civil Services Appellate Tribunal came to be rejected by the Tribunal but the copy of the Tribunal's order has not been placed on record.
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> However, learned counsel submits on instructions that the impugned order has since been withdrawn and, therefore, the petitioner seeks permission to withdraw this writ petition with liberty to take resort to appropriate remedy in future in relation to his posting/transfer in accordance with law, if occasion so arise. Permission granted.
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> The writ petition is dismissed as withdrawn with liberty as prayed."

The petitioner has now filed the present writ petition with the submissions that on 03.11.2007, the respondents have issued a transfer list (Annex.P/3) wherein his name occurs at Sl. No.7 and he has been transferred to Government Upper Primary School, Anantpura Jogi, Ahore.

Seeking to challenge the order dated 03.11.2007, it has been contended by the learned counsel for the petitioner that

the said transfer order remains fundamentally illegal for having been made allegedly at the request of the petitioner by using the word “स्वेच्छिक" in the particulars stated against the name of the petitioner. It is contended that the petitioner never made any such request that he be transferred from Baggon-ki-Dhani to Anantpura Jogi and hence, the reason for transfer, on the so-called 'voluntary' basis, is fundamentally non-existent. Learned counsel further submitted that the petitioner has been subjected to frequent transfers inasmuch as within a period of about 1½ months, twice the transfer orders have been made in relation to the petitioner. It has also been contended that the transfer of the petitioner has not been made in any administrative exigency and no person has been posted vice the petitioner. Learned counsel also attempted to submit on the competence of the State Government to issue such transfer order.

After examining the record, learned counsel for the petitioner was posed a question if at all the petitioner made any representation after issuance of the earlier order dated 14.09.2007 because the submissions as made in the writ petition are not specific in that regard. Learned counsel responded with the submissions on instructions that the petitioner did make a representation though he had not retained the copy thereof but, by way of the said

representation the petitioner made a request for his transfer/adjustment at Dhokalon-ki-Dhani, village Poonasa, Panchayat Samiti Bhinmal.

Having given a thoughtful consideration to the submissions made on behalf of the petitioner and having examined the material placed on record, this Court is clearly of opinion that this writ petition remains bereft of substance and does not merit admission.

Though the transfer order dated 03.11.2007 (Annex.P/3) could have been challenged by way of appeal before the Tribunal; and, for there being no special circumstance or reason for the petitioner not taking resort to such alternative remedy, this Court could have rejected the writ petition on this count alone, however, having regard to the overall facts and circumstances of the case, the contentions of the petitioner in this case have been examined while leaving aside the question of alternative remedy.

In the first place, it is required to be pointed out that the petitioner had not been forthright while making submissions particularly in his earlier writ petition No.7391/2007. It is noticed that on the earlier occasion, though the writ petition was filed by the petitioner stating that his appeal had been rejected by the Tribunal without filing of the copy of the order passed by the Tribunal but then, it was stated before this Court

on 19.11.2007 that the impugned transfer order had been withdrawn and, therefore, the petitioner wanted to withdraw the writ petition with liberty to take resort to appropriate remedies in future in relation to his posting/transfer, if occasion would arise. It was not stated by the petitioner that fresh order of transfer had also been made on 03.11.2007 and that he was aggrieved of such transfer order dated 03.11.2007 too.

Even while leaving the shortcomings in the conduct of the petitioner aside, this Court is clearly of opinion that on merits the contentions sought to be urged on behalf of the petitioner remain bereft of substance. The submission about frequent transfers has hardly any basis or even relevance in the present case. It is not the case of the petitioner that the earlier order dated 14.09.2007 was ever put into effect and was implemented. The petitioner was of course transferred under the said order but seems not to have joined at the new place of posting; and before the said order dated 14.09.2007 was implemented, the Department on 03.11.2007 made the fresh order of transfer. Thus, the contention regarding frequent transfers is required to be rejected.

So far the contention regarding the Department having not posted anybody in place of the petitioner is concerned, the same is required to be rejected for being of no substance or avail. As to who should be posted where, is a matter for the

authorities to consider and the transfer order in relation to the petitioner is not vitiated even if nobody has been posted vice him.

So far the submissions regarding competence of the State Government are concerned, the same stand concluded against the petitioner for the view taken by this Court on 19th November 2007 in a batch of similar petitions led by CWP No. 7341/2007 (Ram Lal Bishnoi Vs. State of Rajasthan & Ors) and in another case, CWP No.7374/2007 (Meena Sharma Vs. State of Rajasthan & Ors.). While rejecting similar nature contentions against competence of the State Government to issue such transfer orders, this court has observed and held on the operation of the relevant provisions of the Rajasthan Panchayati Raj Act 1994 and Rajasthan Panchayati Raj Rules 1996 that,-

> "Sub-section (8-A) of Section 89 has been inserted by way of amendment to the Act of 1994 with a non obstante clause overriding the provisions of Sub-section (8) of Section 89. Thus, the powers of the State Government to transfer any member of service from one Panchayat Samiti to another within or outside the district, from one Zila Parishad to another, from one Panchayat Samiti to Zila Parishad or from one Zila Parishad to Panchayat Samiti have their overriding effect on any other power of transfer with any other authority. Operation of such wide powers finds incorporation in the scheme of the Rules of 1996 too. The State Government may also stay the operation of, or cancel, any order of transfer made under Sub-section (8) of Section 89 whereby appointment by transfer is envisaged to be made after consultation with Pradhans

or Pramukhs of Panchayat Samitis and Zila Parishads, as the case may be, whereto and wherefrom such transfer is proposed to be made.

A look at the Rules aforesaid and the source of wide powers of State Government that is, Sub-section (8-A) of Section 89 of the Act of 1994, makes it clear that it is within the competence of the State Government, inter alia, to transfer an employee like the petitioner from one Panchayat Samiti to another Panchayat Samiti within the same District or outside the District.

As noticed, wide powers of the State Government flowing from Sub-section (8-A) of Section 89 have their overriding effect and are not whittled down by any other provision in the Act nor could be read circumscribed by any provision in the Rules. The powers of the State Government being untrammelled and unaffected by any other power with any other authority to issue transfer order, this Court is clearly of opinion that the transfer orders of the present nature as issued by the State Government, transferring the employees from one Panchayat Samiti to another Panchayat Samiti, do not suffer from want of authority nor could be said to have been issued in violation of any statutory condition or requirement."

In view of the decision aforesaid, the contentions against competence of the State Government to issue the order of transfer of the petitioner from one Panchayat Samiti to another deserve to be rejected.

The specious contention that the impugned order has been made as if it were a transfer on request and suffers from illegality for the petitioner having never made any such request is required to be rejected for the specific observations made in the impugned order itself, Though the expression "स्वेच्छिक"

indicative of it being a voluntary transfer has been used in column No.6 of the impugned transfer order, it has been clarified in its paragraph No.3 that such order in relation to seven employees was being issued while disposing of their representations and hence would be considered of transfers on voluntary basis. The Department has distinctly stated that,-

> "उपरोक्त आदेश प्राप्त परिवेदनाओं के निस्तारण पर किये गये हैं । अत: यह सभी स्वैच्छिक आधार पर समझे जायेंगे ।

The petitioner has chosen not to file a copy of the representation as made to the Department by him but learned counsel for the petitioner on instructions submitted that the petitioner did make a representation and requested for his transfer/adjustment at Dhokalon-ki-Dhani, village Poonasa under Panchayat Samiti, Bhinmal. The Department was to take an objective decision on the representation so made while keeping administrative exigencies in view; and while disposing of the representation of the petitioner, if the Department has chosen to modify the previous transfer order but has posted him to a particular place, though not the same as suggested by the petitioner, the transfer order does not suffer on that count from any want of authority or from any error or illegality. Though the right of an employee to make representation in relation to his transfer/posting cannot be

denied but no further right could be acceded to such an employee that the Department would be obliged to post him only at the place chosen or suggested by him.

In the aforesaid view of the matter, this Court is clearly of opinion that the challenge as put forward by the petitioner to the transfer order dated 03.11.2007 remains absolutely bereft of substance. It remains fundamental that an order of transfer calls for interference only if the same has been issued mala fide or in violation of statutory condition. No such case is made out so as to call for any interference in the extra-ordinary writ jurisdiction of this Court.

The writ petition fails and is, therefore, rejected.

(DINESH MAHESHWARI), J.

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